The City of New York

POLICE DEPARTMENT

March 19, 2014

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Bilal Ates
Tax Registry No. 934429
113 Precinct-Detective Squad
Disciplinary Case No. 2013-8809

A conference was held before me on the above-referenced case on March 11, 2014. The charges allege the following:

1. Said Police Officer Bilal Ates, while assigned to the Gang Squad Brooklyn North, while on-duty, on or about March 18, 2010, in the County of Kings, swore falsely and his false statement consisted of testimony and was material to the action, proceeding or matter in which it was made.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS
NYS PENAL LAW SECTION 210.15 – PERJURY IN THE FIRST DEGREE

2. Said Police Officer Bilal Ates, while assigned to the Gang Squad Brooklyn North, while on-duty, on or about March 18, 2010, in the County of Kings, swore falsely.

P.G. 203-10, Page 1, Paragraph 5 GENERAL REGULATIONS
NYS PENAL LAW SECTION 210.05 PERJURY IN THE THIRD DEGREE

3. Said Police Officer Bilal Ates, while assigned to the Gang Squad Brooklyn North, while on-duty, on or about January 22, 2010, in the County of Kings, knowing that a written instrument, namely an ECAB screening sheet, contained a false statement or false information, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of state, namely: Kings County District Attorney's Office, offered or presented it to a public office or public servant with the knowledge or belief that it would be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

NYS PENAL LAW SECTION 175.35 – OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE

4. Said Police Officer Bilal Ates, while assigned to the Gang Squad Brooklyn North, while on-duty, on or about January 22, 2010, in the County of Kings, knowing that a written instrument, namely an ECAB screening sheet, contained a false statement or false information, he offered or presented it to a public office or public servant, namely: Kings County District Attorney's Office, with the knowledge or belief that it would be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation.

P.G. 203-10, Page 1, Paragraph 5 GENERAL REGULATIONS
NYS PENAL LAW SECTION 175.30 OFFERING A FALSE INSTRUMENT FOR FILING IN THE SECOND DEGREE

5. Said Police Officer Bilal Ates, while assigned to the Gang Squad Brooklyn North, while on-duty, on or about January 22, 2010, in the County of Kings, made or caused a false entry in the business record of an enterprise.

P.G. 203-10, Page 1, Paragraph 5 GENERAL REGULATIONS
NYS PENAL LAW SECTION 175.05 (1) FALSIFYING BUSINESS RECORDS IN THE SECOND DEGREE

6. Said Police Officer Bilal Ates, while assigned to the Gang Squad Brooklyn North, while on-duty, on or about January 22, 2010 and March 18, 2010, in the County of Kings, intentionally obstructed, impaired or perverted the administration of law or other governmental function or prevented or attempted to prevent a public servant form (sic) performing an official function, by means of intimidation, physical force or interference, or by means of an independently unlawful act.

P.G. 203-10, Page 1, Paragraph 5 GENERAL REGULATIONS
NYS PENAL LAW SECTION 195.05 OBSTRUCTING GOVERNMENTAL ADMINISTRATION IN THE SECOND DEGREE

7. Said Police Officer Bilal Ates, while assigned to the Gang Squad Brooklyn North, while on-duty, on or about January 22, 2010 and March 18, 2010, in the County of Kings, with intent to obtain a benefit or deprive another person of a benefit committed an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act was unauthorized.

P.G. 203-10, Page 1, Paragraph 5 GENERAL REGULATIONS
NYS PENAL LAW SECTION 195.00 (1) OFFICIAL MISCONDUCT

The Department was represented by Penny Bluford-Garrett, Esq., Department Advocate's Office, and the Respondent was represented by Michael Martinez, Esq., Worth, Longworth & London, LLP.

DECISION

The motion to dismiss should be granted.

DISCUSSION

Respondent is charged with seven specifications each involving serious criminal charges. Respondent, in fact, had been indicted and tried on these criminal charges. All of the charges relate to statements made by Respondent in a criminal court complaint and in his testimony at the grand jury in connection with an arrest he made as a result of a search warrant he had obtained. Respondent was acquitted of all charges following a bench trial in Kings County Supreme Court

The Department has moved to dismiss the disciplinary charges against Respondent. The reason given by the assistant Department advocate (Advocate) is that Respondent did not intentionally mislead the prosecutor and the false or incorrect statements were the result of a misunderstanding. As a result the Advocate asserted, the criminal charges could not be sustained. Moreover the Advocate noted that Departmental charges could not be lodged because the time permitted for filing such charges under the statute of limitations had expired, leaving no alternative but to dismiss the disciplinary case against Respondent.

I concur that the disciplinary charges against Respondent must be dismissed but I find that the Advocate did not go far enough in explaining the lack of substance in the allegations against Respondent. Moreover, even if there were not a statute of limitations issue I do not believe the Respondent's actions amounted to misconduct.

In preparing this report I have considered the statements made to me by the Advocate in the court appearance on March 11, 2014 and the Case Analysis and Recommendation Memorandum prepared by her. I have heard from Respondent's attorney in this matter, who also defended Respondent in the criminal case. In addition I have obtained and reviewed documents related to this case which are referenced herein.

The facts as explained to me by the Advocate are that Respondent, who at the time of this incident was assigned to the Brooklyn North Gang Squad obtained information from a confidential informant that a gang member was selling drugs in [redacted] in Kings County.

Respondent apparently followed all of the proper procedures in notifying his command and, using his informant, conducting two controlled buys at the location. He then went to the district attorney's office with the informant and they were taken before a judge from whom he obtained a search warrant for the location.

It was determined that the warrant was to be executed on January 22, 2010 and, according to the Advocate's report, it appears that all of the proper procedures were followed regarding the execution of that warrant. The Emergency Service Unit (ESU) was to "take" the door and Respondent, who was the designated arresting officer, was right by the door when it was "popped" open.

According to the Advocate's report Respondent said that when the door opened he saw a person identified as Person A, about six feet from the door, "hunched over what he later learned to be a scale located on a table." Respondent, the report notes, stated that Person A looked "like a deer caught in headlights."

Pursuant to Departmental procedure members of ESU entered the apartment and secured the location basically by handcuffing everyone who was present in the apartment. After that was done Respondent and members of his team entered the apartment. When he entered the apartment Respondent said he saw a few bags containing marijuana on the floor and what is described in the report as "a big cardboard box full of loose weed." The report also says that there were "approximately two hundred zip lock bags containing marijuana and another sixteen sandwich bags containing marijuana." The report even states that Person A, who was handcuffed, had a bag of marijuana in his hand. The report also notes that "marijuana, crack cocaine, drug paraphernalia, zip lock bags, a scale and currency were recovered and invoiced" from the apartment.

The report also indicates that while six people were initially in the apartment four were let go and only two were arrested.

Respondent testified that over a pound of marijuana was recovered and this testimony, as far as I know, is not questioned. The voucher, which again is not questioned, lists the recovery of a digital scale, assorted zip lock bags, a plastic bag of crack-cocaine, a large plastic bag of marijuana, 13 plastic bags of marijuana, 19 green zip lock bags of marijuana, and 203 clear plastic bags of marijuana. A quantity of US currency was also vouchered.

Frankly this seems like a well run, lawful and effective police operation. One has to wonder how Respondent, a police officer doing his job and apparently doing it well, wound up being indicted and tried for a crime while the case against Person A was dismissed.

The indictment was based on an alleged falsehood made by Respondent when he testified that during the execution of the search warrant he observed Person A packaging marijuana. The specific alleged falsehoods occurred in the criminal court complaint and during his testimony before the grand jury.

The language in the criminal court complaint is as follows:

> The Deponent (Respondent herein) states that, at the above time and place, [he] observed Defendant Person A in possession of a quantity of marijuana weighing in excess of one pound in that Deponent recovered said quantity of marijuana from the living room of the above location *where Defendant Person A was packaging said quantity of marijuana into ziplock bags*, (emphasis added).

The problem with this statement apparently was that Respondent did not actually see Person A put marijuana into a bag or bags. As a former prosecutor and as a former judge of the Criminal Court, I find charging someone with perjury for this statement astonishing. The man who Respondent described as looking like a deer in headlights, based on the facts described herein, was doing just what Respondent said he was doing; weighing loose marijuana and putting it into zip lock bags. I would also add that the obvious purpose of this endeavor was to sell the bags of marijuana.

It could be argued that Respondent testified as to a conclusion he made instead of limiting his statement to the facts he observed but that is not a lie and that is not the crime

of perjury. Perjury requires not only a false statement but the intent to deceive. Neither of those are present in this scenario.

There is an even more fundamental issue here, people draw conclusions all the time and speak of them as fact. Lawyers questioning witnesses and drafting documents have the responsibility of breaking down statements so that conclusions are limited. I say limited and not eliminated because at some level everything we know or believe we know about the world is based on conclusions we, often unconsciously, make.

The responsibility for drafting criminal court complaints has historically been a prosecutorial responsibility. Assistant district attorneys are supposed to review these documents to assure that they are accurate. With the advent of central booking and other techniques designed to expedite arraignment and limit police overtime, the burden of preparing complaints has fallen more on the police. But ultimately an assistant district attorney is responsible to make sure that the affidavit, which is a legal document filed with the court by the prosecutor, is properly prepared.

In this regard it needs to be noted that this is not a case where Respondent invented a fact pattern or told an outright lie. All he appears to have done is to have drawn a conclusion from facts which are not really in dispute. A lawyer cannot be held accountable for drafting a false document when the information he or she receives is false but the lawyer and not the affiant should be held responsible for not questioning and determining when a statement is a conclusion rather than an observation.

Respondent's statement in the grand jury is a little different. In the grand jury Respondent testified:

> As we entered the apartment I observed Person A, who was in the living room packaging, -- well, he was weighing a green leafy substance... and putting it into a box.

In this instance the Respondent tried to be more precise. His uncontroverted statement is that he did see Person A weighing a green leafy substance on a scale. The part about putting it in a box is, frankly, inconsequential.

Again there is simply no perjury here. Human beings, even human beings under oath, make slight mistakes or misstatements during testimony. In this instance it had or should have had no material effect on the case against Person A.[1]

I want to be clear that I believe police officers should be held to a high standard of truth and that the public has a right to rely, without hesitation, on a police officer's testimony. Recently I recommended a substantially increased penalty in a case involving an officer who filed a false affidavit involving the sale of an alcoholic beverage to a minor (See *Case No. 8447/12*, approved October 21, 2013) because this issue is of great importance. This case, however, seems to represent an overreaction that is detrimental to good police work.

It is difficult to imagine the trauma that Respondent suffered as a result of this. It is also difficult to imagine what the Department can do for this Respondent to rectify that situation. At a minimum Respondent should be restored the 30 days he served on suspension following his arrest.

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[1] I am advised that the Obstructing Governmental Administration charge was based on the fact that the prosecutor felt he had to dismiss the case against Person A based on Respondent's perjury.

Looking to the future it would seem that some effort should be made to screen cases prosecuted by the various district attorney's offices to help ensure that members of the service are treated fairly and uniformly.

In this case the only thing more I can do is recommend that the disciplinary case be Dismissed and that the time Respondent served on suspension be restored.

Respectfully submitted,

Martin G. Karopkin
Deputy Commissioner - Trials

APPROVED

MAY 05 2014

WILLIAM J. BRATTON
POLICE COMMISSIONER